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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption

Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau is amending the official commentary that interprets the requirements of the Bureau's Regulation Z (Truth in Lending) to reflect a change in the asset size threshold for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the 12-month period ending in November. The exemption threshold is adjusted to increase to \$2.060 billion from \$2.028 billion. The adjustment is based on the 1.1 percent increase in the average of the CPI-W for the 12-month period ending in November 2014. Therefore, creditors with assets of \$2.060 billion or less as of December 31, 2014, are exempt, if other requirements of Regulation Z also are met, from establishing escrow accounts for higher-priced mortgage loans in 2015. The adjustment to the escrows exemption asset-size threshold will also increase a similar threshold for small-creditor portfolio and balloon-payment qualified mortgages. Balloon-payment qualified mortgages that satisfy all applicable criteria, including being made by creditors that do not exceed the asset-size threshold, are also excepted from the prohibition on balloon payments for high-cost mortgages.

DATES: This final rule is effective January 1, 2015.

FOR FURTHER INFORMATION CONTACT: James Wylie, Counsel, Office of Regulations, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA section 129D(a) to contain a general requirement that an escrow account be established by a creditor to pay for property taxes and insurance premiums for certain first-lien higher-priced mortgage loan transactions. Section 1461 of the Dodd-Frank Act also generally permits an exemption from the higher-priced mortgage loan escrow requirement for a creditor that: (1) operates predominantly in rural or underserved areas; (2) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the Bureau; (3) retains its mortgage obligations in portfolio; and (4) meets any asset-size threshold and any other criteria as the Bureau may establish.

In the 2013 Escrows Final Rule,¹ the Bureau established such an asset-size threshold of \$2,000,000,000, which would adjust automatically each year, based on the year-to-year change in the average of the CPI-W for each 12-month period ending in November, with rounding to the nearest million dollars.² For 2014, the threshold was \$2.028 billion. During the 12-month period ending in November 2014, the average of the CPI-W increased by 1.1 percent. As a result, the exemption threshold is increased to

¹ 78 FR 4726 (Jan. 22, 2013).

² See 12 CFR 1026.35(b)(2)(iii)(C).

\$2.060 billion for 2015. Thus, loans made by creditors with total assets of less than \$2.060 billion as of December 31, 2014, that meet the other requirements of 12 CFR 1026.35(b)(2)(iii) will be exempt in 2015 from the escrow-accounts requirement for higher-priced mortgage loans.

The adjustment to the escrows exemption asset-size threshold will also increase the threshold for small-creditor portfolio and balloon-payment qualified mortgages under Regulation Z. The requirements for small-creditor portfolio qualified mortgages at 12 CFR 1026.43(e)(5)(i)(D) reference the asset threshold in 12 CFR 1026.35(b)(2)(iii)(C). Likewise, the requirements for balloon-payment qualified mortgages at 12 CFR 1026.43(f)(1)(vi) references the asset threshold in 12 CFR 1026.35(b)(2)(iii)(C). Balloon-payment qualified mortgages that satisfy all applicable criteria in §§1026.43(f)(1)(i) through (vi) and 1026.43(f)(2), or the conditions set forth in §1026.43(e)(6), including being made by creditors that do not exceed the asset threshold in 12 CFR 1026.35(b)(2)(iii)(C), are also excepted from the prohibition on balloon payments for high-cost mortgages in 12 CFR 1026.32(d)(1)(ii)(C).

II. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, comment 35(b)(2)(iii)-1 in Regulation Z is amended to update the exemption threshold. The amendment in this final rule is technical and nondiscretionary, and it merely applies the formula previously established in Regulation

Z for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2015. The amendment in this notice is technical and non-discretionary, and it applies the method previously established in the agency's regulations for automatic adjustments to the threshold.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320), the agency reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

Part 1026 — TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

2. In Supplement I to Part 1026—Official Interpretations, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans, 35(b)(2) Exemptions, Paragraph 35(b)(2)(iii)*, paragraph 1.iii is revised to read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

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SUBPART E—SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

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Section 1026.35—Requirements for Higher-Priced Mortgage Loans

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35(b)(2) Exemptions

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Paragraph 35(b)(2)(iii)

1. *Requirements for exemption.* * * *

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iii. As of the end of the preceding calendar year, the creditor had total assets that are less than the asset threshold for the relevant calendar year. For calendar year 2015, the asset threshold is \$2,060,000,000. Creditors that had total assets of less than \$2,060,000,000 on December 31, 2014, satisfy this criterion for purposes of the exemption during 2015. This asset threshold shall adjust automatically each year based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. The Bureau will publish notice of the asset threshold each year by amending this comment. For historical purposes, the prior asset thresholds were:

A. For calendar year 2013, the asset threshold was \$2,000,000,000. Creditors that had total assets of less than \$2,000,000,000 on December 31, 2012, satisfied this criterion for purposes of the exemption during 2013.

B. For calendar year 2014, the asset threshold was \$2,028,000,000. Creditors that had total assets of less than \$2,028,000,000 on December 31, 2013, satisfied this criterion for purposes of the exemption during 2014.

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Dated: December 15, 2014.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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